



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: CWA - 203567

PRELIMINARY RECITALS

Pursuant to a petition filed on October 28, 2021, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on December 22, 2021, by telephone.

The issue for determination is whether this appeal is timely.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
Power of Attorney
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 24, 2021, Petitioner submitted an application for MA benefits.

3. On August 31, 2021, the agency sent Petitioner a notice informing him that his application was approved and that he was enrolled in the Community Waivers plan. The notice further informed Petitioner that, based on his applicable income, he was required to pay a \$2955.14 monthly cost share. The notice then informed Petitioner that if he disagreed with that determination, he could file an appeal with the Division of Hearings and Appeals by October 18, 2021.
4. On October 28, 2021, the Division of Hearings and Appeals received Petitioner's appeal request via fax.

DISCUSSION

Community Waivers Programs, including IRIS, are designed to enable elderly, blind and disabled persons to live in community settings rather than in state institutions or nursing homes. Such waivers allow the Medical Assistance (MA) Program to pay for community services that are not normally covered by the MA program. The waiver program runs according to the terms of a waiver that was granted to Wisconsin by the federal government. The waiver allows the Department to operate the program without following all of the rules that normally apply to MA. Wis. Stat., §46.277; see also 42 U.S.C.A. §1396n(c), 42 C.F.R. §435.217.

An appeal must be timely filed. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a); IRIS Policy Manual: Work Instructions, §11.1A.1. Language concerning the right to appeal and the time limit is included on all department notices. The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

In this case, the notice informed Petitioner that he had until October 18, 2021 to file the appeal. Petitioner's representative wrote a letter requesting the appeal and dated that letter October 18, 2021. Further, Petitioner's representative hand wrote October 18, 2021 on the form to file the appeal. However, the documents themselves were not faxed to the Division of Hearings and Appeals until October 28, 2021, 10 days after the appeal deadline. Since the appeal was not timely filed, I do not have jurisdiction to determine the underlying merits of this case. Though I will note that Petitioner is disputing the cost share amount and that the agency has correctly determined the amount based on applicable rules. See Medicaid Eligibility Handbook §15.2.2.

Petitioner's representative did note that Petitioner was an astrophysicist before suffering a stroke. Further, Petitioner's representative noted that her nephew took all of Petitioner's money and left him in this predicament. Petitioner's representative also noted that she has been helping Petitioner by paying for his costs out of pocket. However, she cannot continue to do so. I sympathize with Petitioner's situation. However, I have no authority to make decisions based on equity or fairness. I am bound by the applicable regulations and have no authority to deviate from them. It is the long-standing position of the Division of Hearings and Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). In other words, I cannot decide an issue based on any fairness argument. This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The appeal is untimely.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

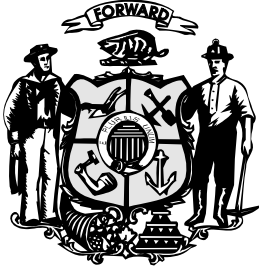
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of January, 2022

\s _____
Nicole Bjork
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 14, 2022.

Milwaukee Enrollment Services
Bureau of Long-Term Support